

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

KELLY JO SUTER, Ph.D.
Plaintiff

VS.

THE UNIVERSITY OF TEXAS AT
SAN ANTONIO, GEORGE PERRY, Ph.D.,
JAMES M. BOWER, Ph.D.
MATTHEW J. GDOVIN, Ph.D.,
ROBERT W. GRACY, Ph.D.,
J. AARON CASSILL, Ph.D., and
EDWIN J. BAREA-RODRIGUEZ, Ph.D.
Defendants

No. 10-CV-692-OLG

PLAINTIFF'S MOTION FOR PROTECTIVE ORDER

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, Kelly Jo Suter, Ph.D., Plaintiff herein and files this Motion for Protective Order pursuant to FRCP 26(c)(5) and FRE 615 and in support hereof respectfully shows the court as follows:

1. The parties are in the process of completing deposition discovery, and at the scheduled deposition of a non-party witness, an attorney for UTSA, Ms. Gail Jenson appeared to attend the deposition despite that 1) she is not an attorney of record for any of the named defendants in this case who are all represented by the Attorney General's office; and 2) she has not been designated as the corporate representative of UTSA. Counsel for Plaintiff objected to Ms. Jenson's attendance at the deposition and she left, but advised that she intended to appear for the named defendants depositions despite objection by Plaintiff. On March 21, 2011, counsel for Defendants notified counsel for Plaintiff via facsimile that Ms. Jenson was going to attend the

depositions in this case unless the court entered a protective order precluding her attendance.

2. Plaintiff moves for a protective order pursuant to FRCP 26(c)(5) and/or to exclude Ms. Jenson pursuant to FRE 615 and requests that the court enter an order limiting deposition discovery such that only the parties and/or witnesses together with their counsel of record be permitted to attend the depositions. Plaintiff moves to preclude Ms. Gail Jenson and any other attorney employed by UTSA, who has not filed an appearance as counsel of record for the defendants in this case and/or who has not been designated as the corporate representative of UTSA in this case, from attending the depositions of any of the parties or any non-party witnesses.

3. There is no legal or factual justification for Ms. Jenson or any other legal representative of UTSA who has not entered an appearance in this case, or who has not been designated as the corporate representative of UTSA to be present for the depositions in this case. In addition, Ms. Jenson has been designated as a person with knowledge of relevant facts by the Plaintiff in her Rule 26 disclosures, and as a potential witness Plaintiff moves to exclude Ms. Jenson from attending the depositions pursuant to FRE 615.

CONCLUSION

4. Plaintiff requests that after consideration of the above and foregoing the court enter an order granting Plaintiff's request and exclude Ms. Gail Jenson from attending the depositions of any of the parties and/or non-party witnesses pursuant to FRCP 26(c)(5) and/or pursuant to FRE 615. Plaintiff prays for all relief at law or in equity to which she may be entitled.

Respectfully submitted this the 22nd day of March, 2011.

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/S/ Regina B. Criswell

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Attorney for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of March, 2011, I electronically filed the foregoing with the clerk of the court using the CM/ECF system which will send notification of such filing to counsel of record:

Lars Hagen

Office of the Attorney General

Attorney for Defendants

/S/ Regina B. Criswell

REGINA BACON CRISWELL